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Office of The Ombudsman, Hong Kong



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Direct Investigation Report

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Buildings Department’s Implementation of Mandatory Window Inspection Scheme

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Executive Summary
Direct Investigation Report

Buildings Department's Implementation of Mandatory Window Inspection Scheme

Foreword

With the amendments to the Buildings Ordinance ("BO"), the Mandatory Window Inspection Scheme ("MWIS") commenced on 30 June 2012. It is implemented by the Buildings Department ("BD") and aims to resolve the problem of dilapidated windows. Under MWIS, owners of private buildings aged 10 years or above (except domestic buildings not exceeding three storeys), who receive a statutory notice of MWIS ("the Notice") from BD, are required to arrange inspection and (where found necessary) repairs for all the windows of their buildings.

Our Findings

2. Our findings in this direct investigation reveal the following inadequacies in BD's implementation of MWIS.

(I) Implementation Progress Significantly Below Targets

3. When MWIS commenced, some 20,000 buildings were within the scope of the Scheme. BD had planned to select 5,800 target buildings, with an estimate of 35 premises in each target building, for mandatory window inspection each year. The first inspection cycle was expected to complete within five years (i.e. by mid-2017). Nevertheless, the numbers of target buildings actually selected under MWIS in 2012 and 2013 were less than 70% of the estimated figures. Due to the failure to meet the targets set for MWIS (including the fact that the average number of premises in each target building was actually 59) and the experience gained in implementing the Scheme, BD has significantly reduced the number

of target buildings since 2014 and it has stopped setting any target completion time for the first cycle of inspections. As at 2018 (i.e. more than one year after the scheduled completion of the first cycle of inspections), only 37% of buildings whose age was within the scope of MWIS were selected as target buildings.

4. In our view, the adjustment that BD made is significant compared with its original target. That would inevitably raise doubts as to whether BD had duly planned for the implementation of MWIS.

5. Figures show that accidents involving fallen windows between 2012 and 2018 mostly took place at buildings aged 10 years or above. However, based on BD's target of selecting 400 target buildings each year in 2018, it would require almost 42 years to complete the inspection of the windows of buildings which are yet to be selected as target buildings in the first inspection cycle. We consider that BD should review the number of actual target buildings selected each year and speed up listing buildings whose age is covered by MWIS as target buildings, so that the problem of dilapidated windows of old buildings can be resolved in an orderly and effective manner to ensure public safety. Where necessary, BD should allocate additional resources.

(II) Failing to Properly Monitor the Compliance with Notices

6. As at March 2019, around 10% of the Notices (totalling nearly 490,000) issued between 2012 and 2018 were not complied with, and some of them were issued when MWIS commenced. In 95% of those cases, the reason for non-compliance with the Notice was that BD had not yet received the certificate in the specified form ("the Certificate") from the Qualified Persons ("QPs") upon completion of the prescribed window inspection. In our view, BD should monitor the compliance with Notices more proactively to avoid further backlog of non-compliance cases. In particular, BD should give priority to long-time outstanding cases where the Certificate has yet to be received.

(III) Lack of Data between 2012 and 2016 for Monitoring the Work of Staff, QPs and Registered Contractors ("RCs")

7. The implementation of MWIS relies heavily on QPs and RCs to properly carry out the prescribed inspection and prescribed repair for the windows of buildings. BD has an audit check mechanism in place to monitor whether QPs and RCs have properly carried out those tasks. However, despite that the Scheme commenced in 2012, prior to 2017, BD had not compiled any data for monitoring the audit checks carried out by its staff (including whether its staff had completed the site audits in a timely manner), and whether QPs and RCs had completed the prescribed inspection and prescribed repair in accordance with the requirements of the legislations, code of practice and practice note. In our view, there were inadequacies on the part of BD in planning for MWIS and monitoring its implementation as the Department only started to maintain the relevant data some four years after the commencement of the Scheme, which led to its failure to identify and make improvement to the problem discussed in paragraph 8 below.

(IV) Time Needed to Complete Site Audits Not Meeting the Requirements in Operational Guidelines

8. Since August 2015, BD has set the time frame for completion of a site audit at two months. Nevertheless, among the selected cases that successfully went through site audits in 2017 and 2018, 44% and 52% respectively were not completed within this time frame. 29% and 37% respectively of such cases even took more than three months to complete. We consider that BD staff must endeavour to abide by the time frame stipulated in the operational guidelines for early identification of prescribed inspection and prescribed repair of windows that are defective, and for timely follow-up actions, including enforcement actions.

9. BD also argues that the above time frame for "completion of a site audit" means the Department would stop following up a case

further if the property owner does not respond within the time frame to BD's request for entry into the premises to conduct a site audit. It does not mean that all site audits must be completed within the time frame. We are doubtful of such interpretation. The literal meaning of "completion of a site audit" cannot be clearer. It means that BD staff successfully enter a selected premises and complete an inspection of the prescribed inspection and/or prescribed repair of the windows in the premises. If BD staff cannot enter a selected premises to carry out an inspection, the site audit is simply never carried out, let alone completed. If BD deems it appropriate to take follow-up actions in accordance with its interpretation above, it should revise the relevant operational guidelines to accurately reflect its actions.

(V) Effectiveness of Site Audits Affected by Failure to Enter Premises

10. For cases selected for site audit by BD in 2017 and 2018, 77% and 78% respectively were terminated because property owners either refused BD's request for a site audit or did not respond to the request. Huge resources were spent on site audits, yet for very limited effectiveness. Since 2017, BD has set a sampling ratio of 10%. Nevertheless, based on the above statistics on cases in which no site audit was carried out because of failure to gain entry into premises, site audits had only been carried out for 2.3% and 2.2% of the Certificates received by BD respectively in 2017 and 2018.

11. This Office considers that BD should explore measures to increase the success rate of its staff entering into premises for site audits so as to enhance the effectiveness of the audit check mechanism as a whole. Besides, instead of using the sampling ratio, BD should adopt the rate of actual entry into premises to carry out site audit as the benchmark to reflect the real situation of site audits.

(VI) Delay in Enforcement against Irregularities

12. Relevant statistics reveal that BD did take follow-up and enforcement actions against Owners' Corporations/property owners who had failed to comply with the Notice. Such actions included issuing warning letters and fixed penalty notices, and instigating prosecutions. Nevertheless, in 142 cases where a Notice had been served in as early as 2012 but compliance was still outstanding as at October 2017, warning letters were only issued to the owners concerned in late 2017 (after more than five years). Such delay was glaring. We consider that BD must take timely enforcement actions against owners who fail to comply with the Notice.

Recommendations

13. In the light of the above, The Ombudsman recommends that BD:

(1) conduct a comprehensive review on the implementation of MWIS and lay down practicable work targets so as to speed up listing buildings whose age is covered by MWIS as target buildings. Additional resources should also be allocated if necessary;

(2) monitor the compliance with Notices more proactively, and to clear backlog promptly and effectively;

(3) review the need to revise the definition of the time frame set in its operational guidelines regarding the completion of site audits so as to clearly reflect the Department's requirement, and remind its staff to follow up and complete site audits within the time frame specified in the operational guidelines;

(4) explore measures to increase the success rate of staff gaining entry into premises for conducting site audits, so that the effectiveness of the audit check mechanism can be enhanced as a whole;

(5) adopt the rate of actual entry into premises to carry out site audit, instead of the sampling ratio, as its work benchmark to better reflect the real situation of site audits; and

(6) take timely enforcement actions against property owners who fail to comply with the Notice.

Office of The Ombudsman
August 2019

1

INTRODUCTION

BACKGROUND

1.1 With the amendments to the Buildings Ordinance ("BO"), the Mandatory Window Inspection Scheme ("MWIS") commenced on 30 June 2012. It is implemented by the Buildings Department ("BD"). Under MWIS, owners of private buildings aged 10 years or above (except domestic buildings not exceeding three storeys), who receive a statutory notice of MWIS ("the Notice") from BD, are required to arrange inspection and (where found necessary) repairs for all the windows of their buildings. Since the commencement of MWIS, this Office has received from time to time complaints against BD for failing to implement MWIS properly.

1.2 Furthermore, this Office has noticed that accidents involving fallen windows occasionally happened in recent years. The windows of some old buildings are dilapidated, but BD takes a long time to select them as target buildings of MWIS. There has also been a case where a window fell from a building although it had already been inspected under MWIS. Such a situation invites concern.

1.3 Against this background, The Ombudsman initiated a direct investigation on 27 April 2018, pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance, to examine whether there are any inadequacies and areas for improvement in BD's implementation of MWIS.

SCOPE AND PROCESS OF INVESTIGATION

1.4 This direct investigation covers:

(1) BD's procedures for issuing Notices;

(2) BD's selection of target buildings of MWIS;

(3) BD's mechanism for monitoring compliance with Notices; and

(4) BD's enforcement actions against breaches of requirements of MWIS.

1.5 On 9 May 2019, we issued our draft investigation report to BD for comments. After considering its comments, we completed this investigation report on 12 August 2019.

2

MANDATORY WINDOW INSPECTION SCHEME

2.1 MWIS, which commenced on 30 June 2012, aims to resolve the problem of dilapidated windows.

SCOPE OF MWIS AND STANDARD OF INSPECTION AND REPAIR

2.2 Pursuant to BO, MWIS covers private buildings aged 10 years or above, including domestic buildings (except those not exceeding three storeys in height), commercial buildings, composite buildings and industrial buildings. When served a Notice by BD, owners of those buildings are required to appoint a Qualified Person ("QP")[1] to carry out the prescribed inspection and supervise the prescribed repair works found necessary of all windows of the buildings. Where prescribed repair is necessary, the owner concerned must appoint a Registered Contractor ("RC")[2] to carry out the prescribed repair under the supervision of a QP.

2.3 Under MWIS, inspection shall cover all windows and glass

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[1] A QP shall be a person whose name is on one of the following registers kept by the Building Authority ("BA") (i.e. the Director of Buildings): (i) Authorised Person; (ii) Registered Structural Engineer; (iii) Registered Inspector; (iv) Registered General Building Contractors ("RGBC") and (v) Registered Minor Works Contractors ("RMWC") registered for the class, type and item of minor works in respect of windows.

[2] An RC shall be an RGBC or RMWC who is qualified to carry out minor works belonging to the class, type and item for which they are registered.

louvers in individual premises and common parts of the building including window walls. Curtain walls, internal glass partitions and shopfront show windows on ground floor are outside the scope of MWIS.

2.4 A QP should adopt the design standard and code of practice prevailing at the time when the building was constructed and when alteration and addition works were carried out, and the standard achieved after completion of the improvement works resulting from the implementation of the Fire Safety (Commercial Premises) Ordinance ("FS(CP)O") or Fire Safety (Buildings) Ordinance ("FS(B)O") as the inspection standard. If repair is found necessary after inspection, the performance of the rectification and repair works shall not be inferior to that required by the legislation, standards and codes of practice prevailing at the time when the building was constructed and when alteration and addition works were carried out, or if fire safety improvement works had been completed in accordance with the Fire Safety Directions issued under FS(CP)O or FS(B)O, the standard of such completed works.

STATUTORY PROCEDURES OF MWIS

2.5 The statutory procedures of MWIS are as follows:

(1) BD serves Notices on the Owners' Corporations ("OCs")/owners of target buildings;

(2) Upon receiving a Notice, the OC/owner must appoint a QP to complete the prescribed inspection and supervise the prescribed repair found necessary within a specified time[3]. Where prescribed repair is required,

[3] Regarding windows of individual premises, the owner concerned must appoint a QP to complete the prescribed inspection and prescribed repair (if necessary) within six months from the date of the Notice. As regards windows in common parts of a building (irrespective of whether the building has an OC or not), the OC/owner concerned must appoint a QP to complete the prescribed inspection and prescribed repair (if necessary) within nine months from the date of the Notice. In case the OC/owner needs to extend the time frame for completion of the prescribed inspection

the owner concerned must appoint an RC to carry out the prescribed repair under the supervision of a QP; and

(3) Upon completion of the prescribed inspection and/or prescribed repair, the QP/RC must submit a certificate in the specified form ("the Certificate") and/or inspection report to BD.

LEGAL LIABILITIES AND DISCIPLINARY ACTION

OCs/Owners

2.6 Regarding OCs/owners who, without reasonable excuse, fail to comply with a Notice (i.e. BD is yet to receive the Certificate upon expiry of the time frame specified in the Notice or the extended time frame as agreed by BD), BD will act according to its operational guidelines and BO, and issue to them the first warning letter, the first penalty notice for a fixed penalty of $1,500; the second warning letter, the second penalty notice for a fixed penalty of $1,500; the third warning letter and then instigate prosecution. For prosecution cases, the OCs/owners concerned will be liable on conviction to a fine of $25,000 and to imprisonment for three months; and to a fine of $2,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

2.7 In addition, if during a site audit (**para. 3.5**) BD staff find that the owner cannot immediately handle the situation where a window is in a dangerous condition, or that an OC/owner has practical difficulties in complying with a Notice, then BD can, under BO, arrange for the required inspection and repair works to be carried out by its consultant and Government contractor, and then recover the costs of the inspection and repair works as well as

and/or prescribed repair, an application for extension of time with justifications shall be made to BD in writing. BD will consider each application on its own merits.

supervision charges from the OC/owner, together with a surcharge of not exceeding 20% of the costs.

QPs and RCs

2.8 According to BO, BD can instigate prosecution against QPs and RCs under MWIS for any irregularities they commit. Relevant stipulations include:

(1) any QP or RC who carries out the prescribed window repair and who knowingly misrepresents a material fact in any plan, certificate, form, report, notice or other document given to BA in respect of the prescribed window inspection or repair works is liable to a fine of $500,000 and to imprisonment for 18 months;

(2) any QP who fails to carry out the window inspection personally is liable to a fine of $250,000;

(3) any QP who fails to provide proper supervision of the prescribed repair found necessary after an inspection is liable to a fine of $250,000; or, in the case of supervision of a prescribed repair that is of minor works, to a fine of $150,000;

(4) any QP or RC for prescribed window repair who fails to ensure the window for which he is appointed to carry out or supervise the prescribed repair is safe or has been rendered safe is liable to a fine of $1,000,000 and to imprisonment for three years; or, in the case of a prescribed repair that is minor works, to a fine of $500,000 and to imprisonment for 18 months; and

(5) any QP or RC for prescribed window repair who carries out the window inspection or the prescribed window repair in such manner that it causes injury to any person or damage to any property is liable to a fine of

$500,000 and to imprisonment for 18 months.

2.9 Besides instigating prosecution under BO, BD can follow the statutory procedures and instigate disciplinary action against QPs and RCs who have committed irregularities. BD will, pursuant to BO, bring to the notice of a disciplinary board ("the Board") appointed by the Secretary for Development to hold an inquiry in relation to the irregularities/misconduct/negligence of the QP and RC concerned. If, after the inquiry, the Board is satisfied that the irregularity/misconduct/negligence in question is substantiated, it can make an order that, for instance, the name of the QP or RC concerned be removed from the relevant register, either permanently or for any period that the Board thinks fit.

2.10 If the irregularities committed by a QP or RC is minor and not related to window safety (such as the information provided in the Certificate is incomplete or unclear, and failure to submit the Certificate within the statutory time frame), BD will ask the QP or RC to rectify them, and may issue a warning letter to the QP or RC, depending on the circumstances.

Other Parties

2.11 According to BO, any person other than a QP who, without reasonable excuse, certifies a prescribed inspection or certifies or supervises a prescribed repair in respect of a window in a building, is liable to a fine of $100,000 and to imprisonment for six months, and to a fine of $5,000 for each day during which it is proved to the satisfaction of the court that the offence has continued.

VOLUNTARY ARRANGEMENTS FOR PRESCRIBED WINDOW INSPECTION AND PRESCRIBED REPAIR ("VOLUNTARY INSPECTION")

2.12 Property owners can, aside from acting on a Notice, voluntarily arrange for prescribed inspection and prescribed repair for the windows of their buildings/premises according to the standards and procedures of MWIS. For owners who have carried

out voluntary inspection, BD will not serve a Notice on them during the inspection cycle of the windows concerned.

3

SELECTION OF TARGET BUILDINGS, NOTICE ISSUANCE PROCEDURES, AND MECHANISM FOR MONITORING COMPLIANCE AND AUDIT CHECKS

SELECTION OF TARGET BUILDINGS

3.1 BD will draw up a list of nominated target buildings ("nomination list") each year for vetting by the Selection Panel ("the Panel")[4] set up by the Government to confirm the buildings which must carry out mandatory window inspection under MWIS. In the initial period of implementation of MWIS, selection of target buildings was based mainly on the number of eligible buildings in each of the 18 districts in proportion to all the eligible buildings in the territory. Later on, BD adopted the risk-based approach as the principle in selecting target buildings, taking into account such

[4] The Panel advises BD on matters relating to the selection of MWIS target buildings. Appointed by the Director of Buildings, members of the Panel include representatives from professional bodies, relevant non-governmental organisations, property management professionals, District Councils and relevant Government departments.

factors as the age, condition and mode of management of a building, as well as whether there are components in a building that may pose a relatively high risk to the public. Moreover, in view of the risks that windows falling from buildings will cause to the public, since 2015, in addition to selecting the above buildings as target buildings, BD has adopted the risk-based approach and selected those buildings where there have been repeated incidents of fallen windows or where the windows are known to be in a deteriorating or dilapidated condition, and recommend to the Panel that those buildings be included as target buildings under MWIS.

PROCEDURES FOR ISSUING NOTICES

3.2 The Panel will discuss and confirm the nomination list. Up till March 2018, BD would send "pre-notification letters" to the OCs/owners of target buildings on the nomination list approved by the Panel, or post the letter at conspicuous places of the buildings to alert owners that they must make preparations and arrangements for carrying out the prescribed inspection and the prescribed repair.

3.3 No less than two months after issuing the pre-notification letters, BD would issue Notices to OCs/owners of the target buildings, requesting them to appoint a QP to complete the prescribed inspection and (if necessary) the prescribed repair within a specified time (**para. 2.5(2)**). Since April 2018, BD has stopped issuing the pre-notification letters to OCs/owners of target buildings but will instead send them Notices right away.

ISSUANCE OF CONFIRMATION LETTERS

3.4 Upon receipt from QPs/RCs of the Certificates and (where applicable) the inspection reports on completion of the prescribed inspection and/or prescribed repair (**para. 2.5(3)**), including the Certificates and (where applicable) the inspection reports submitted in relation to voluntary inspections (**para. 2.12**), BD will conduct

basic checks on those Certificates and inspection reports. Such checks include whether the QPs concerned are listed on the relevant registers maintained by BA (**Note 1 on p.3**). If everything is found to be in order, BD will issue a confirmation letter to the OCs/owners to confirm their compliance with the Notice.

RANDOM SITE AUDITS

3.5 In addition to monitoring compliance with Notices by OCs/owners, BD will conduct random site audits upon receipt of the Certificates and the inspection reports submitted by QPs/RCs (**para. 2.5(3)**), including the Certificates and inspection reports submitted in relation to voluntary inspections (**para. 2.12**). This is to ascertain that the prescribed inspection and/or prescribed repair have been carried out in accordance with BO, as well as the code of practice and practice notes issued by BD.

Sampling Ratio and Time Frame for Completing Site Audits

3.6 According to the operational guidelines issued by BD in 2013, for cases in which prescribed repair is not required after inspection by a QP and for which a Certificate has been submitted, BD will conduct random site audits on 5% of the Certificates received. As for cases in which prescribed repair is required after inspection by a QP and for which a Certificate and an inspection report have been submitted, BD will conduct random site audits on 10% of the Certificates received. BD staff should complete the site audits within 30 days after a case has been selected[5].

3.7 Since August 2015, BD has set the time frame for completion of a site audit at two months. Moreover, starting from January 2017, BD has decided to conduct random site audits on

[5] The original operational guideline reads: "The Team Leaders of the District Team/Mandatory Building Inspection Sections should retrieve from the Mandatory Window Inspection Scheme Audit Check Register at weekly intervals to identify the cases within his purview to complete the audit check within 30 days after the sampled cases have been recorded in the Register."

10% of the Certificates received, regardless of whether prescribed repair is required in those cases. In June 2018 when BD revised its operational guideline, these two arrangements were incorporated[6].

3.8 BD explained to this Office that the aforementioned 5%/10% sampling ratio refers to the percentage of the number of Certificates received by BD that were selected for site audits, not the percentage of cases where BD staff actually entered the premises selected for site audits.

Site Audits

3.9 BD will issue letters to the owners of premises selected for site audits, requesting them to arrange for entry by BD staff to their premises. BD will conduct site audits on premises whose owners respond to the letters.

3.10 For premises whose owners do not respond to the letters, BD staff will pay them a visit and if the staff cannot enter the premises, they will leave a contact slip to the owners, requesting them to arrange for entry by BD staff for site audits. If the owners still do not respond, BD will not pursue further.

3.11 Where BD staff successfully enter the premises, they will check the condition of all windows inside the premises and (where appropriate) the completed repair works of the windows and keep a record. In case irregularities of QPs and/or RCs are found, BD will conduct an investigation. Subject to the investigation results, BD will consider instigating prosecution and/or disciplinary actions (**paras. 2.8-2.9**).

MONITORING MECHANISM

3.12 Since the commencement of MWIS on 30 June 2012, BD has recorded such information as the dates of issuance of, expiry of and compliance with Notices in its Building Condition Information

6 The requirement regarding the time frame for site audits in the revised operational guidelines reads: "Team Leader should complete site audit within 2 months."

System ("BCIS"). Senior professional officers of BD regularly monitor cases of non-compliance with Notices expired through BCIS, and report them to the chief professional officers each month. Since June 2015, the tasks have been included in the monitoring by the Progress Monitoring Committee ("the Committee")[7] which meets every four months.

3.13 Moreover, in May 2017, BD upgraded BCIS and enabled the system to send email reminders regarding cases of non-compliance with Notices expired to professional officers responsible for MWIS on a daily basis for timely follow-up action. Also in 2017, BD added a new function to BCIS to keep records of site audits under MWIS and their outcome in order to strengthen monitoring work. Prior to that, BD had used only electronic spreadsheets (i.e. Excel tables) to maintain records of cases of site audits and whether BD staff could enter the premises selected for site audits.

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[7] The Committee is composed of the Director of Buildings, the Deputy Director, the Assistant Directors and chief professional officers concerned. The Committee meets every four months to monitor the enforcement actions against existing buildings, which include monitoring of follow-up actions on reports and progress of work relating to non-compliance with statutory orders.

4

IMPLEMENTATION OF MWIS

SELECTION OF TARGET BUILDINGS

4.1 When MWIS was first launched, BD set a target of selecting 5,800 target buildings each year for mandatory window inspection. At that time, assuming there were 35 premises involved in each target building, BD estimated that window inspection for some 20,000 private buildings (**para. 2.2**) in the territory falling within the scope of the Scheme would be completed within five years, i.e. by mid-2017 (“inspection cycle”).

Preparation Work before Implementation of MWIS

4.2 BD stated that before launching MWIS, it had undertaken a wide range of preparation work based on the foreseeable circumstances at that time, including publicity campaigns, encouraging building professionals to register as QPs and holding briefing sessions for them, as well as participating in seminars organised by various sectors to explain to the public details about the Scheme and the assistance packages available.

Downward Adjustment in Number of Target Buildings

4.3 BD noted that its work progress had fallen short of the estimated target because huge volume of work was involved in the implementation of MWIS, and the average number of premises in each target building turned out to be 59 instead of the estimated 35

(**para. 4.1**). BD also needed to adjust its strategy and reallocate resources for taking enforcement action against cases of non-compliance with Notices, stepping up support for owners to comply with Notices, strengthening the regulation of QPs and RCs under the Scheme, and handling large numbers of public enquiries and requests to participate in briefing sessions from owners and stakeholders at the initial period of implementation of MWIS. Taking into account the implementation progress of MWIS, and the public view in general that the pace of the Scheme should be slowed down to allow owners more time to understand the Scheme's requirements and make preparation, BD gradually reduced the number of target buildings selected under MWIS from 2014, and no longer set any target completion time for the first inspection cycle under the Scheme.

Number and Age Profile of Target Buildings

4.4 The annual target and actual numbers of target buildings selected under MWIS between 2012 and 2018 are given in **Table 1**.

Table 1: Target and actual numbers of target buildings under MWIS

Year	**Target no. of target buildings *(a)***	**Actual no. of target buildings *(b)***	**Achievement rate *(c)***
2012 (From 30 June)	4,350	2,823	65%
2013	5,800	3,943	68%
2014	1,000	1,018	102%
2015	650	663	102%
2016	500	500	100%
2017	400	464	116%

2018	400	435	109%

4.5 BD indicated that a certain number of buildings are selected as MWIS target buildings each year using the risk-based approach (**para. 3.1**). It will review in a timely manner the number of target buildings to be selected each year and the manpower required to implement the Scheme, taking into account the actual operation experience, market situation, and opinions of stakeholders and members of the community. If necessary, BD will seek additional resources in accordance with the established mechanism. Meanwhile, BD encourages building owners to carry out voluntary inspection (**para. 2.12**) as necessary to ensure good maintenance and safety of windows. According to BD records, apart from carrying out works in compliance with the Notices, more than 10,000 cases of minor works involving window repair or replacement were carried out under the Minor Works Control System each year. BD reckoned that the figures showed that its public education campaigns since 2017 have raised public awareness of the importance of regular window maintenance, thereby prompting more people to carry out timely and necessary window repair on their own initiative.

4.6 The number of buildings having reached the age covered by MWIS, and the respective number of buildings that were selected as MWIS target buildings as at 2018 are given in **Table 2**.

Table 2: Number of buildings of age range covered by MWIS and selected as MWIS target buildings

Building age	No. of buildings of age covered by MWIS as at December 2018	Target buildings selected under MWIS	
		No. of buildings	Percentage
10-19	3,713	492	13%

20-29	5,316	2,340	44%
30-39	5,371	2,286	43%
≥40	12,137	4,728	39%
Total	**26,537**	**9,846**	**37%**

ISSUANCE OF NOTICES AND COMPLIANCE

4.7 The number of Notices issued by BD between 2012 and 2018, and their compliance as at March 2019 are given in **Table 3**.

Table 3: Issuance of Notices and compliance

Year	**No. of Notices issued *(a)* *(=(b)+(d)+(f))***	**As at March 2019**				
		No. of Notices in *(a)* complied with		**No. of Notices in *(a)* not complied with**		
		No. of Notices *(b)*	**Compliance rate *(c)***	**No. of Notices expired# *(d)***	**Non-compliance rate *(e)***	**No. of Notices not expired# *(f)***
2012	2,767	2,755	99.6%	12	0.4%	0
2013	119,178	110,696	92.9%	8,430	7.1%	52
2014	105,943	95,489	90.1%	10,415	9.8%	39
201	123,259	113,84	92.4%	9,380	7.6%	35

5		4				
2016	86,280	78,288	90.7%	7,947	9.2%	45
2017	30,223	25,637	84.8%	4,537	15%	49
2018	20,181	9,568	47.4%	8,731	43.3%	1,882
Total	**487,831**	**436,277**	**89.4%**	**49,452**	**10.1%**	**2,102**

Including those with extension of time agreed by BD.

4.8 BD stated that it had adjusted the strategy for implementing MWIS in 2015, thereby reallocating resources for taking enforcement action against cases of non-compliance with Notices, stepping up support for owners to comply with Notices and strengthening the regulation of QPs and RCs under the Scheme. Since 2016, BD has drawn up an annual action plan, including setting performance targets for issuing warning letters and fixed penalty notices against non-compliance cases. It also upgraded BCIS in May 2017, such that daily reminders will be sent to the relevant professional officers on information of Notices expired but not complied with for timely follow-up action (**para. 3.13**).

4.9 Besides, BD explained that by taking proactive follow-up actions against Notices expired but not complied with, it had significantly reduced the number of non-compliance cases from around 160,000 in 2014 to less than 50,000 in March 2019. The compliance rate stood at nearly 90% (**columns (d) and (c)** in **Table 3** under **para. 4.7**).

REASONS FOR NON-COMPLIANCE WITH NOTICES

4.10 As at March 2019, 49,452 Notices (**column (d)** in **Table 3** under **para. 4.7**) issued by BD between 2012 and 2018 had expired but not yet been complied with. **Table 4** shows the reasons for non-compliance.

Table 4: Reasons for non-compliance with Notices

Year	No. of Notices expired but not complied with as at March 2019 *(a)* *(=(b)+(c) +(d))*	Reasons for non-compliance		
		Certificates not yet submitted by QPs (excluding cases in *(d)*) *(b)*	Pending amendment of Certificate information by QPs *(c)*	Others (e.g. prescribed repair not yet completed after prescribed inspection carried out by QPs) *(d)*
2012	12	11	0	1
2013	8,430	7,775	139	516
2014	10,415	9,780	197	438
2015	9,380	9,002	184	194
2016	7,947	7,655	175	117
2017	4,537	4,251	60	226
2018	8,731	8,602	111	18
Total	**49,452**	**47,076 (95%)**△	**866 (2%)**△	**1,510 (3%)**△

△ *Figures in brackets represent the percentage out of the total number in column (a) for the relevant category.*

ENFORCEMENT ACTIONS TAKEN AGAINST OCs/OWNERS FOR NON-COMPLIANCE WITH NOTICES

4.11 If OCs/owners fail to comply with Notices without any reasonable excuse, BD may, depending on the severity of non-compliance, issue warning letters or fixed penalty notices to the

OCs/owners, or even instigate prosecution (**para. 2.6**). To expedite the handling of some particularly serious cases (such as failure to comply with a Notice long after its expiry), where BD has already issued the first fixed penalty notice to the owner and if the owner still does not comply with a Notice without reasonable excuse, BD will consider instigating prosecution against the owner without issuing any further warning letter/fixed penalty notice. Since March 2019, BD has instigated prosecution against the owners concerned in 10 such cases.

4.12 Moreover, where BD staff find window(s) in a dangerous condition during site audits but the owners cannot handle such situation immediately, or where the OCs/owners have practical difficulties in complying with the Notices, BD may arrange for the required inspection and repair works to be carried out by its consultant and Government contractor, and then recover from the OCs/owners the costs of inspection and repair works and supervision charges, together with a surcharge (**para. 2.7**).

4.13 The enforcement actions as at March 2019 taken by BD against OCs/owners concerned regarding non-compliance with Notices issued between 2012 and 2018 and already expired are given in **Table 5**.

Table 5: Overview of warning letters and fixed penalty notices issued to, and prosecution instigated against OCs/owners regarding non-compliance with Notices

	Follow-up actions taken by BD as at March 2019	**No. of cases**
(a)	No. of Notices issued between 2012 and 2018 and already expired	485,729
(b)	No. of Notices in *(a)* expired but not complied with (including the Notices still not complied with as at March 2019 and those only complied with after expiry)	318,168

(c)	No. of Notices in *(b)* complied with before a warning letter was issued by BD		212,880
(d)	Warning letters[#] issued to OCs/owners regarding cases in *(b)*	No. of warning letters issued (=*(e)+(f)*)	90,401
(e)		No. of Notices complied with after warning letter issued	56,423
(f)		No. of Notices still not complied with after warning letter issued	33,978
(g)	First fixed penalty notices issued to OCs/owners regarding cases in *(f)*	No. of first fixed penalty notices issued (=*(h)+(i)*)	2,852
(h)		No. of Notices complied with after first fixed penalty notice issued	2,130
(i)		No. of Notices still not complied with after first fixed penalty notice issued	722
(j)	Second fixed penalty notices issued to OCs/owners regarding cases in *(i)*	No. of second fixed penalty notices issued (=*(k)+(l)*)	43
(k)		No. of Notices complied with after second fixed penalty notice issued	17
(l)		No. of Notices still not complied with after second fixed penalty notice issued	26
(m)	No. of prosecutions		26

[#] *BD has not maintained breakdown statistics on the warning letters issued (i.e. whether the warning letters issued were the first, second or third letters). Regarding the 262 Notices issued in 2012 but not yet complied with as at October 2017, BD had issued warning letters to the owners concerned in 120 cases in (or before) October 2017. For the remaining 142 cases, warning letters were issued in end 2017.*

4.14 As at March 2019, BD had arranged for the required

window inspection works to be carried out by its consultant in 109 cases, of which the window inspection and repair works (if necessary) were completed in 22 cases. BD has also taken action to recover the relevant costs from the OCs/owners. For the remaining cases, the window inspection or repair works were still under way.

RANDOM SITE AUDITS

4.15 BD conducts site audits on a random sample of Certificates and (where appropriate) inspection reports submitted by QPs/RCs to ensure that the relevant prescribed inspection/prescribed repair works have been carried out properly (**para. 3.5**). BD may instigate prosecution and/or disciplinary action against QPs/RCs who are found to have committed any irregularity/misconduct/negligence (**paras. 2.8-2.9**).

4.16 Since BD only added the function of recording the status and outcome of site audits to BCIS in 2017 (**para. 3.13**), it does not have data about the cases selected for site audits (**paras. 3.5-3.7**) under MWIS between 2012 and 2016, including the time required for completing the site audits and the audit outcome. BD's relevant data for 2017 and 2018 are given in **Tables 6 and 7**.

Table 6: Time required for completing site audits

			2017 ***(x)***	**2018** ***(y)***
(a)	No. of cases selected for site audits		5,960	3,790
(b)	No. of cases in *(a)* with site audits completed		1,400	834
(c)	Time required for completing site audits for cases in *(b)*	0-30 days	391 (28%)*	162 (19.4%)*
(d)		31-60 days	389 (28%)*	237 (28.4%)*

(e)		61-90 days	210 (15%)*	128 (15%)*
(f)		More than 90 days	410 (29%)*	307 (37%)*
(g)	No. of cases in *(a)* not pursued because owners refused/did not respond to inspection requests		4,560 (77%)△	2,953 (78%)△
(h)	No. of cases in *(a)* with site audits still not completed as at March 2019		0	0

* *Figures in brackets represent the percentage of relevant cases out of the total number of cases with site audits completed (row (b)).*

△ *Figures in brackets represent the percentage of relevant cases out of the total number of cases selected for site audits (row (a)).*

4.17 BD indicated that the time frame stipulated in its operational guidelines (**paras 3.6-3.7**) refers to the time by which the Department will stop following up the site audit of a case. It does not mean that all site audits must be completed within 30 days/two months. If an owner responds to BD after the stipulated time and allows its staff to enter the premises for inspection, BD will proceed with the site audit. BD explained that the time required for completion of a site audit largely depends on whether the owner is willing to cooperate. Hence, it might take longer time to complete some cases.

Table 7: Outcome of site audits

Year of site audit	No. of site audits *(a)* *(=(b)+ (c))*	No. of cases with prescribed inspection and/or prescribed repair in compliance with legislation, code of practice and practice notes *(b)*	No. of cases with prescribed inspection and/or prescribed repair not in compliance with legislation, code of practice and practice notes *(c)*
2017	1,439	1,373 (95%)*	66 (5%)*
2018	1,082	1,047 (97%)*	35 (3%)*

* *Figures in brackets represent the percentage of the number of relevant cases in relation to the total number of site audits (column (a)).*

ENFORCEMENT ACTIONS AGAINST QPs AND RCs FOR IRREGULARITIES

4.18 Pursuant to BO, BD may instigate prosecution against irregularities committed by QPs and RCs under MWIS, and may also notify the Board appointed by the Secretary for Development to conduct inquiries and make orders in respect of any irregularity/misconduct/negligence committed by QPs and RCs (**paras. 2.8-2.9**).

4.19 The irregularities/misconduct/negligence committed by QPs and RCs as found by BD between 2012 and 2018, and the actions taken against the QPs and RCs concerned are given in **Table 8**.

Table 8: Irregularities/misconduct/negligence committed by QPs and RCs and follow-up actions taken by BD

Types of irregularities/misconduct/negligence committed by QPs	No. of counts of irregularities/mis-conduct/negligence# confirmed as	Actions taken against QPs and/or RCs as at March 2019

	and RCs *(a)*	requiring further action after investigation by BD as at December 2018 *(b)*	No. of prosecu -tion *(c)*	No. of discipli-nary action instigat ed *(d)*
(1)	Making a misrepresentation in a Certificate	25	13	3
(2)	Failing to carry out window inspection personally	8	4	0
(3)	Failing to provide proper supervision of window repair works	4	3	0
(4)	Failing to ensure the window is safe or has been rendered safe when supervising repair works	6	4	0
(5)	Carrying out window inspection in such a manner likely to cause a risk of injury to any person or damage to any property	19	11	0
(6)	Failing to ensure the window has been rendered safe when carrying out repair works	2	1	0

(7)	Carrying out window repair in such a manner likely to cause a risk of injury to any person or damage to any property	3	2	0
	Total	**67**	**38**	**3**

[#] *One case may involve more than one type of irregularity/misconduct/negligence.*

4.20 As at March 2019, BD had completed investigation into the 67 counts of irregularities/misconduct/negligence in column (b) in the Table above, and submitted its findings to the Department of Justice ("DoJ") for considering appropriate legal actions under BO. After examining the evidence collected by BD, the applicable legislation and the principles under the Prosecution Code, DoJ advised not to instigate prosecution against the QPs and/or RCs concerned in 29 cases, and so prosecution was instigated in only 38 cases. Apart from this, BD may decide to instigate disciplinary action against the QPs and RCs concerned, having regard to the severity of the irregularities/misconduct/negligence.

5

NOTIFICATIONS RECEIVED BY BD ON ACCIDENTS INVOLVING FALLEN WINDOWS

5.1 MWIS aims to resolve the problem of dilapidated windows (**para 2.1**). However, accidents involving fallen windows still happened from time to time since the commencement of MWIS. Regarding the number of notifications BD received on accidents involving fallen windows between 2012 and 2018, and whether the buildings concerned were of the age covered under MWIS, and whether the accidents involved windows that had already completed mandatory inspection are tabulated in **Table 9**.

Table 9：Notifications received by BD on accidents involving fallen windows

Year	No. of notifications received by BD on accidents involving fallen windows *(a)*	No. of buildings in *(a)* that were of the age covered under MWIS *(b)*	No. of accidents involving windows that have completed mandatory inspection *(c)*	Actions taken against QPs/RCs concerned in cases in *(c)* as at March 2019	
				Cases with prosecution *(d)*	Cases with disciplinary action instigated *(e)*
201	27	25	0	0	0

2					
2013	30	30	0	0	0
2014	20	18	2	0	0
2015	17	17	3	0	2
2016	82*	67	5	1	0
2017	86*	74	7	1	0
2018	69*	57	3	0	0
Total	**331***	**288**	**20 (6%)△**	**2**	**2**

* *From 2016, statistics compiled by BD on accidents involving fallen windows include media reports, and records provided by owners' organisations/District Council members on accidents involving fallen windows in individual housing estates.*

△ *The figure in bracket is the number of accidents involving windows that have completed mandatory inspection expressed as a percentage of the total number of accidents involving fallen windows which BD had received notification (column (a)).*

5.2 Of the 20 accidents shown above **(column (c)** in **Table 9)** involving windows that have completed mandatory window inspection, six were already included in the follow-up action listed in **Table 8** (**para. 4.19**), including two prosecution cases, two cases where DoJ recommended that no enforcement action be taken, and two cases where disciplinary procedures had been instigated. For the remaining 14 cases, BD had conducted investigations after the window-falling accidents but found no irregularities/misconduct/negligence by the QPs/RCs concerned.

Enforcement action was, therefore, not warranted.

5.3 BD indicated that many factors may lead to incidents involving fallen windows. Besides the age of buildings, whether windows are being regularly maintained or properly used will directly affect their safety. On the other hand, old buildings which undergo timely maintenance and repair may also have had all the windows replaced. In addition, 92% of all private buildings in Hong Kong are 10 years old or above. As such, BD considers that there may not be a direct correlation between the risk of window falling and the age of building.

6

OUR COMMENTS AND RECOMMENDATIONS

6.1 Based on our findings in the previous chapters, this Office has found the following inadequacies in BD's implementation of MWIS.

(I) IMPLEMENTATION PROGRESS SIGNIFICANTLY BELOW TARGETS

6.2 MWIS, which covers private buildings aged 10 years or above (except domestic buildings not exceeding three storeys in height), aims to resolve the problem of dilapidated windows in those buildings (**paras. 2.1-2.2**). When MWIS commenced on 30 June 2012, there were some 20,000 buildings within this category, and BD had planned to select 5,800 target buildings for mandatory window inspection each year. With an estimate of 35 premises in each target building, the first inspection cycle was expected to complete within five years (i.e. by mid-2017) (**para. 4.1**). Nevertheless, **Table 1** (**para. 4.4**) shows that the numbers of target buildings actually selected under MWIS in 2012 and 2013 were less than 70% of the estimated figures. In 2014, BD significantly reduced the number of target buildings to 1,000 each year, and it stopped setting any target completion time for the first cycle of inspection. In 2017 and 2018, BD further reduced the number of target buildings to 400 each year. As at 2018 (i.e. more than a year after the scheduled completion of the first inspection cycle), there were totally 26,537 buildings whose age was within the scope of

MWIS, but only 9,846 (37%) of them were selected as target buildings (**Table 2** under **para. 4.6**).

6.3 BD explained that the implementation progress of MWIS has been significantly below targets because the workload for this Scheme is heavy, and the average number of premises in each target building is far more than expected. Moreover, BD had to adjust its strategies and redeploy resources based on the experience gained in implementing MWIS. Therefore, BD has gradually reduced the number of target buildings of MWIS since 2014 (**para. 4.3**).

6.4 In our view, it is not unreasonable for BD to adjust the number of target buildings based on its actual implementation of MWIS. Yet, the adjustment that BD made was very significant compared with its original target. That would inevitably raise doubts as to whether BD had duly planned for the implementation of MWIS. Although BD had made various preparations before the implementation of MWIS, which included holding briefing sessions for the industry and participating in seminars to explain to the public details of MWIS and the assistance packages available (**para. 4.2**), the Department still had to deal with a lot of public enquiries at the initial period of implementation of MWIS. Besides, BD had underestimated the actual number of premises in each target building (**para. 4.3**). As a result, the implementation progress of MWIS has fallen significantly below the original targets.

6.5 On the other hand, between 2012 and 2018, BD had been notified of a total of 331 accidents involving fallen windows. Those cases involved 288 buildings aged 10 years or above (**columns (a) and (b)** in **Table 9** under **para. 5.1**). We understand that there might not be a direct correlation between the age of building and the risk of window falling. Nevertheless, given that 92% of private buildings in the territory are aged 10 years or above (**para. 5.3**) and it is unknown how many old buildings have already undergone proper repair works, the potential risk of windows falling from those buildings should not be taken lightly. In fact, **Table 9** shows that accidents involving fallen windows each year between 2012

and 2018 were mostly related to buildings aged 10 years or above.

6.6 Based on BD's target of selecting 400 target buildings each year in 2018, there would still be 16,691 buildings to be included as target buildings (**para. 6.2**), which would require almost 42 years for BD to complete the first inspection cycle. Meanwhile, more private buildings will be reaching the age of 10 years or above[8], and hence be covered by MWIS. On the other hand, is it necessary to list buildings already checked under MWIS as target buildings again five years after an inspection[9]? Against this background, the progress of BD's implementation of MWIS and whether the aim of the Scheme to "resolve the problem of dilapidated windows" can be achieved are indeed questionable. BD indicated that there are over 10,000 cases each year where the owners take the initiative to arrange minor works of repairs or replacement of windows in accordance with the Minor Works Control System (**para. 4.5**). Do these works involve repair or replacement of all windows of the premises concerned? Are they carried out according to the standards of repair under MWIS? We consider that BD should review the number of target buildings actually selected each year and speed up listing buildings whose age is covered by MWIS as target buildings, so that prescribed inspection and prescribed repair for the windows of those buildings will be carried out, and the problem of dilapidated windows of old buildings can be resolved in an orderly and effective manner to ensure public safety. If necessary, BD should allocate additional resources.

(II) FAILING TO PROPERLY MONITOR COMPLIANCE WITH NOTICES

6.7 After issuing a Notice, BD will monitor its compliance (**para. 3.11**). Under MWIS, the time frames for compliance for

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8 According to the information provided by BD, in the 10 years between 2020 and 2029, about 140 to 300 more private buildings (except domestic buildings not exceeding three storeys in height) will be reaching the age of 10 years each year, making a total of about 2,200 buildings to be included.

9 Under MWIS, premises whose windows have been inspected will not be issued a Notice within five years after an inspection.

individual premises and common parts of a building are six months and nine months respectively from the date of the Notice (**Note 3** on **p.4**).

6.8 Since the commencement of MWIS on 30 June 2012, BD has been monitoring the compliance with Notices through BCIS. Moreover, BD has from June 2015 included the work progress of following up cases of non-compliance with Notices in the monitoring by the Committee formed by its directorates and chief professional officers (**para. 3.12 and Note 7**). Since May 2017, BD has also enhanced BCIS and enabled the system to send email reminders regarding cases of non-compliance with Notices expired to professional officers responsible for MWIS on a daily basis (**para. 3.13**). Nevertheless, as at March 2019, there were as many as 49,452 Notices which had expired but not complied with (including those issued in 2012) (**column (d)** in **Table 3** under **para. 4.7**), accounting for about 10% of the Notices issued (**column (e)** in **Table 3**).

6.9 As regards 95% of the aforementioned 49,452 Notices not complied with, the reason for non-compliance was that BD has never received the Certificate (**column (b)** in **Table 4** under **para. 4.10**). Other reasons for non-compliance included pending amendment of Certificate information by QPs (2%) (**column (c)** in **Table 4**) and the prescribed repair not yet completed after the prescribed inspection was carried out by QP (3%) (**column (d)** in **Table 4**).

6.10 According to BD, its proactive follow-up action has led to a significant drop in the number of cases of non-compliance with Notices expired from about 160,000 in 2014 to less than 50,000 in March 2019, which represents a compliance rate of close to 90% (**para. 4.9**). While this Office does not deny the efforts made by BD, we notice that BD has continued to reduce the number of target buildings of MWIS and issued fewer Notices (**column (b)** in **Table 1** under **para. 4.4 and column (a)** in **Table 3** under **para. 4.7**). With the combined effect of reducing the target buildings and issuing fewer Notices, the rate of compliance will naturally see a

rise. In fact, as at March 2019, there were still non-compliance cases involving Notices issued at the initial period of implementation of MWIS. For example, 9.8% of the Notices issued in 2014 were not yet complied with (**column (e)** in **Table 3**). The situation is not satisfactory.

6.11 In our view, BD should monitor the compliance with Notices more proactively to avoid further backlog of such cases. In particular, BD should give priority to long-time outstanding cases where BD has never received any Certificate.

(III) LACK OF DATA BETWEEN 2012 AND 2016 FOR MONITORING THE WORK OF STAFF, QPs AND RCs

6.12 Under BO, QPs and RCs will be accorded the most severe penalty for irregularities regarding MWIS (**paras. 2.8-2.9**). This reflects that the implementation of the Scheme relies largely on the proper work of QPs and RCs in carrying out prescribed inspection and prescribed repair for OCs/owners of the buildings concerned.

6.13 BD's audit check mechanism under MWIS (**para. 3.5**) aims to enable its staff to monitor whether QPs and RCs have properly carried out the prescribed inspection and prescribed repair. However, prior to 2017, BD had not compiled any statistics for monitoring the audit checks carried out by its staff.

6.14 Although MWIS commenced as early as 30 June 2012, BD only added a function to BCIS in 2017 to keep records of site audits under MWIS and their outcome. Prior to that, BD had only maintained records of simple information such as whether BD staff could enter the premises selected for site audits (**para. 3.13**). Between 2012 and 2016, BCIS had only maintained such information as the dates of issuance of, expiry of and compliance with Notices while the following detailed statistics about the site audits conducted by BD each year during the period were not recorded:

(1) time required for completing site audits for cases selected (see the figures of 2017 and 2018 in **rows (c)-(f)** in **Table 6** under **para. 4.16**);

(2) number of cases not pursued because owners refused/did not respond to inspection requests (see the figures of 2017 and 2018 in **row (g)** in **Table 6**); and

(3) number of cases with inspection and/or repair in compliance and not in compliance with the legislation, code of practice and practice notes (see the figures of 2017 and 2018 in **columns (b)-(c)** in **Table 7** under **para. 4.17**).

6.15 In our view, BD, as the Government department implementing MWIS, should have maintained data relating to site audits since the commencement of the Scheme so that it could verify whether its staff had completed the site audits in a timely manner (**paras. 3.6-3.7**), and whether the prescribed inspection and prescribed repair works of windows carried out by QPs and RCs met the requirements of the legislation, code of practice and practice notes. As regards the irregularities of QPs and RCs, BD should take necessary follow-up actions, which include instigating prosecution and disciplinary action and/or issuing warning letters (**paras. 2.8-2.10**). That BD only started to compile the relevant data more than four years after the commencement of MWIS showed the Department's improper planning and insufficient monitoring. As a matter of fact, had the BD management started to keep such data since MWIS commenced, it would have been aware earlier of the problem discussed in paragraph 6.16 below and adopted improvement measures.

(IV) TIME NEEDED TO COMPLETE SITE AUDITS NOT MEETING THE REQUIREMENTS IN OPERATIONAL GUIDELINES

6.16 Since August 2015, BD has set the time frame for

completion of a site audit at two months (**para. 3.7**). In 2017, of the 1,400 cases (**column (x), row (b)** in **Table 6** under **para. 4.16**) which BD had successfully completed site audits, only 780 cases (56%) had the inspections completed within the above time frame (**column (x), rows (c)-(d)** in **Table 6**). For the remaining 620 cases (44%) (**column (x), rows (e)-(f)** in **Table 6**), the time of completion of site audits did not meet the requirements in the operational guidelines, with inspections in 410 cases (29%) taking even more than three months to complete (**column (x), row (f)** in **Table 6**). As for 2018, of the 834 cases which BD had successfully completed site audits (**column (y), row (b)** in **Table 6**), only 399 cases (47.8%) had the inspections completed within the above time frame (**column (y), rows (c)-(d)** in **Table 6**). For the remaining 435 cases (52%) (**column (y), rows (e)-(f)** in **Table 6**), the time of completion of site audits did not meet the requirements in the operational guidelines, with inspections in 307 cases (37%) taking even more than three months to complete (**column (y), row (f)** in **Table 6**). The above objective figures showed that the time taken by BD to complete site audits often exceeded the stipulations in the operational guidelines.

6.17 We consider that BD staff must endeavour to abide by the time frame stipulated in the operational guidelines for early identification of prescribed inspection and prescribed repair works of windows that are defective, and for timely follow-up action, including enforcement action.

6.18 Furthermore, according to the original text of the relevant operational guidelines, BD staff should complete a site audit within 30 days/two months after a case has been selected for site audit (**Notes 5 and 6** under **paras. 3.6-3.7**). BD argued that the time frame of 30 days/two months refers to the time by which the Department will, of its own accord, stop following up the site audit of a case. It does not mean that all site audits must be completed within 30 days/two months (**para. 4.17**). We are doubtful of such interpretation. The literal meaning of “completion of a site audit” cannot be clearer. It means that BD staff successfully enter a selected set of premises and complete an inspection of the

prescribed inspection and/or prescribed repair of the windows in the premises. If BD staff cannot enter the selected premises to carry out an inspection, the site audit is simply never carried out, let alone completed. If BD deems it appropriate to take follow-up actions in accordance with its interpretation above, it should revise the relevant operational guidelines to accurately reflect its actions.

(V) EFFECTIVENESS OF SITE AUDITS AFFECTED BY FAILURE TO ENTER PREMISES

6.19 The purpose of BD in conducting site audits is to ascertain whether the prescribed inspection and/or prescribed repair of the windows of OCs/owners who received a Notice have been carried out in accordance with BO, the code of practice and the practice notes (**para. 3.5**). If BD staff cannot enter the premises selected to conduct an inspection of the windows, they simply cannot ascertain whether the windows are safe or have been rendered safe, and whether follow-up action is required. Nor can they fully assess the effectiveness of MWIS.

6.20 According to BD's operational guidelines, if the owner of a selected set of premises persistently refuses to respond to BD's request for conducting a site audit, the Department would not pursue further (**para. 3.10**).

6.21 For cases selected for site audit by BD in 2017 and 2018, 77% and 78% respectively were terminated because the owners either refused BD's request for a site audit or did not respond to the request (**columns (x) and (y), row (g)** in **Table 6** under **para. 4.16**). Huge resources were spent on site audits, yet for very limited effectiveness.

6.22 Furthermore, the sampling ratio set by BD (which is 10% since 2017) is the percentage of Certificates selected by BD for site audits, not the percentage of cases where BD staff actually entered the premises selected for site audits (**para. 3.8**). Based on the statistics in the previous paragraph on cases in which no site audit

was carried out because of failure to gain entry into premises, site audits had only been carried out for 2.3% and 2.2% of the Certificates received by BD in 2017 and 2018 respectively.

6.23 This Office considers that BD should explore measures to increase the success rate of its staff entering into premises for site audits so as to enhance the effectiveness of the audit check mechanism as a whole. Besides, instead of using the sampling ratio, BD should adopt the rate of actual entry into premises to carry out site audit as the work benchmark to reflect the real situation of site audits.

(VI) DELAY IN ENFORCEMENT AGAINST IRREGULARITIES OF OCs/OWNERS

6.24 If OCs/owners who, without reasonable excuse, fail to comply with a Notice, BD can issue to them a warning letter or fixed penalty notice, or even prosecute them (**para. 2.6**). Relevant statistics reveal that BD did take follow-up and enforcement actions against OCs/owners who had failed to comply with Notices (**Table 5** under **para. 4.13**). Of the 262 cases where a Notice had been served by BD as early as 2012 but compliance was still outstanding as at October 2017, warning letters were issued to the owners concerned by October 2017 in 120 cases. Nevertheless, for the remaining 142 cases, warning letters were issued to the owners concerned only in end 2017 (after more than five years). Such delay was glaring (**Note to Table 5**). We consider that BD must take timely enforcement action against owners who fail to comply with Notices.

RECOMMENDATIONS

6.25 In the light of the above comments, The Ombudsman recommends that BD:

(1) conduct a comprehensive review on the

implementation of MWIS and lay down practicable work targets so as to speed up listing buildings whose age is covered by MWIS as target buildings for carrying out prescribed inspection and prescribed repair for the windows of those buildings. Additional resources should be allocated if necessary (**paras. 6.4-6.6**);

(2) monitor the compliance with Notices more proactively, and to clear backlog promptly and effectively (**paras. 6.8-6.11**);

(3) review the need to revise the definition of the time frame set in its operational guidelines regarding the completion of site audits so as to clearly reflect the Department's requirement, and remind its staff to follow up and complete site audits within the time frame specified in the operational guidelines (**paras. 6.16-6.18**);

(4) explore measures to increase the success rate of staff gaining entry into premises for conducting site audits, so that the effectiveness of the audit check mechanism can be enhanced as a whole (**paras. 6.21 and 6.23**);

(5) adopt the rate of actual entry into premises to carry out site audit, instead of the sampling ratio, as its work benchmark to better reflect the real situation of site audits (**paras. 6.22-6.23**); and

(6) take timely enforcement action against owners who fail to comply with Notices (**para. 6.24**).

ACKNOWLEDGEMENTS

6.26 The Ombudsman thanks BD for its full cooperation during

the course of this investigation.

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